

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of Section 2.106 of the
Commission's Rules to Allocate
Spectrum at 2 GHz for Use by
the Mobile Satellite Service

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ET Docket 95-18

RM-7927

To: The Commission

Opposition of UTC to
MSS Coalition's Petition for Partial Reconsideration

Pursuant to Section 1.429 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC), hereby opposes the *Petition for Partial Reconsideration of the MSS Coalition (MSS Coalition Petition)* filed jointly by Celsat America, Inc., COMSAT Corporation, ICO Global Communications and Personal Communications Satellite Corporation (collectively MSS Coalition) in the above-captioned proceeding.¹ Of particular concern to UTC is the continuing campaign by the MSS industry, further evidenced by the *MSS Coalition Petition*, to eliminate the established transition rules for the 2110-2150 and 2160-2200 MHz band (upper 2 GHz band). UTC urges the FCC to reject the MSS industry's attempts to weaken or eliminate the transition rules.

¹ Filed May 20, 1997, in ET Docket No. 95-18.

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UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. UTC's members provide public safety- and public service-related services in all fifty (50) states. UTC's members range in size from large combination electric-gas-water utilities which serve millions of customers, to smaller, rural electric cooperatives and water districts which serve only a few thousand customers each. Serving on UTC's Board of Directors are representatives from its affiliated trade associations, including:

- American Gas Association
- American Public Power Association
- American Water Works Association
- Edison Electric Institute
- Interstate Natural Gas Association of America
- National Rural Electric Cooperative Association

All utilities and pipelines depend upon reliable and secure communications to assist them in carrying out their obligations to provide service to the public, and many operate 2 GHz systems which are subject to relocation by emerging technology licensees. On behalf of its members, UTC objects to the recommendations regarding the transition rules made by the MSS Coalition.

I. The FCC's Decision to Impose Relocation Costs on MSS Operators Is Well-Justified

In yet another attempt to undermine the 2 GHz transition framework established back in 1992 after extensive public comment, the MSS Coalition characterizes the FCC's

decision to apply the transition framework to MSS operators as "unwarranted" and "premature." UTC urges the FCC to summarily reject the MSS Coalition's tired rehash of previously-rejected arguments concerning this issue.

There is nothing "premature" about the application of the transition framework to the upper 2 GHz band. The FCC adopted the basic structure of this framework in September of 1992 in the *First Report and Order* in ET Docket No. 92-9.² It has been clear ever since that the transition framework, including the obligation of new emerging technology licensees to pay the relocation costs of incumbents, applies to the entire emerging technology band. While the specific relocation mechanism to be applied to the upper 2 GHz was subject to further discussion, the basic framework was not.³ It is ludicrous for the MSS industry to assert at this late date that the application of the transition framework to the upper 2 GHz band is in any way "premature."

Part of the MSS Coalition's argument against the application of the transition rules to MSS operators focuses on the relocation of the Broadcast Auxiliary Service (BAS) to the 1990-2025 MHz band. But for this relocation, the MSS Coalition argues, sharing between FS incumbents and MSS operators would be feasible, and the relocation of incumbents would be unnecessary. UTC strongly disagrees and notes that the MSS Coalition's argument is fatally flawed in at least two respects:

² 7 FCC Rcd 6886 (1992).

³ The FCC confirmed its intention to apply the same basic transition rules to the upper 2 GHz band as recently as last year. In its *First Report and Order* regarding PCS cost-sharing, the FCC noted that "the microwave relocation rules already apply to all emerging technology services."

- (1) The licensing scheme adopted by the FCC for MSS and BAS does not in any way change the basic relocation framework. This framework remains in effect whether or not the BAS are relocated to the 1990-2025 MHz band.
- (2) The MSS industry has not proven that sharing between MSS and FS operations is feasible. While this issue is being studied by the Telecommunications Industry Association (TIA), there is, as of yet, no evidence to demonstrate that MSS and FS operations can co-exist in the US. In fact, some studies already indicate that, at the very least, long-term sharing between MSS and FS operations will be complex and difficult.⁴ Therefore, the licensing scheme for BAS has no bearing on whether there is a need for the established relocation framework – there is.

II. The FCC Must Protect FS Operations by Maintaining The Basic Transition Framework

The FCC in its *First Report and Order* reaffirmed one of the basic tenets of the transition framework adopted for the entire emerging technology band (1850-2200 MHz) by stating that MSS operators must pay to relocate all incumbents with which sharing is not feasible.⁵ The FCC also noted that it will address the specific mechanism for the relocation in the *Further Notice of Proposed Rulemaking (FNPRM)*.⁶

The MSS Coalition disagrees with the FCC's decision to continue forward with the rules established back in 1992, regurgitating many of the same arguments made by

⁴ UTC Comments on COMSAT Corporation's (COMSAT) "Supplemental Comments," filed March 14, 1996, in ET Docket No. 95-18.

⁵ *First Report and Order (FR&O)*, para. 43. The transition framework establishes that emerging technology licensees must: 1) Guarantee payment of all costs of relocating to a comparable facility. Relocation costs include all engineering, equipment, and site costs and FCC fees, as well as any reasonable additional costs; 2) Complete all activities necessary for placing the new facilities into operation, including engineering and frequency coordination; 3) Build and test the new microwave (or alternative) system. *Third Report and Order and Memorandum Opinion and Order*, ET Docket No. 92-9, 8 FCC Rcd 6589 (1993).

⁶ *FR&O*, para. 43.

the MSS industry at previous stages in this docket. However, these arguments ignore the potential impact of relocation rule changes on the vital operations of incumbents. One of the primary purposes of the rules is, after all, to protect incumbent operations. As UTC has noted many times in this proceeding, utilities and pipelines use their 2 GHz microwave systems to provide vital communications services requiring extremely high reliability (99.999% or greater availability). Whether regulating the flow of natural gas in a pipeline or maintaining the nation's electric grid, these entities cannot tolerate the risk of interference.

To support its position, the MSS Coalition relies mostly on economic arguments, claiming that relocation costs will approach \$1 billion⁷ and that the imposition of relocation costs on the 2 GHz MSS industry would impair satellite interests worldwide and restrict competition in the satellite market.⁸ The real issue in this proceeding is not whether there will be costs associated with the relocation of incumbents, but which party should be required to bear these costs. UTC continues to support the FCC's acknowledgment that the new commercial licensees in the band should bear the costs, and not the ratepayers of the nation's electric, gas and water utilities and natural gas pipelines.

⁷ *MSS Coalition Petition*, p. 24.

⁸ It is difficult to see how \$1 billion in relocation costs would jeopardize MSS worldwide. Licensees in the thriving Personal Communications System (PCS) market paid many times this amount simply to acquire their licenses at auction. In addition, these licensees faced similar relocation obligations and buildout responsibilities.

Conclusion

The Commission must reject the request for reconsideration of the transition rules proffered by the MSS Coalition. The established 2 GHz transition framework must be applied to the MSS band to protect vital incumbent operations.

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed above.

Respectfully submitted,

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Dated: June 19, 1997

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